

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARY ALAN EBERLY,

Plaintiff,

v.

SACRAMENTO COUNTY SHERIFF  
DEPARTMENT, et al.,

Defendants.

No. 2:25-cv-0736 CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 The court is required to screen complaints brought by prisoners seeking relief against a  
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

6 The court has reviewed plaintiff’s complaint and finds that it fails to state a claim upon  
7 which relief can be granted under federal law. Plaintiff’s complaint must be dismissed. The  
8 court will, however, grant leave to file an amended complaint.

9 Plaintiff alleges he was wrongfully convicted of murdering his wife. He seeks release  
10 from prison and damages. Plaintiff is informed that when a state prisoner challenges the legality  
11 of his custody and the relief he seeks is the determination of his entitlement to an earlier or  
12 immediate release, his sole federal remedy is a writ of habeas corpus which plaintiff would seek  
13 under 28 U.S.C. § 2254. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). Also, to the extent  
14 plaintiff seeks damages, plaintiff is informed he cannot proceed on a §1983 claim for damages if  
15 the claim implies the invalidity of his conviction or sentence, Heck v. Humphrey, 512 U.S. 477,  
16 487 (1994), as the claims do in his complaint.

17 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to  
18 make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended  
19 complaint be complete in itself without reference to any prior pleading. This is because, as a  
20 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
21 F.2d 55, 57 (9th Cir. 1967).

22 In accordance with the above, IT IS HEREBY ORDERED that:

23 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 2) is GRANTED.

24 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees  
25 shall be collected and paid in accordance with this court’s order to the Director of the California  
26 Department of Corrections and Rehabilitation filed concurrently herewith.

27 /////

28 /////

1 3. Plaintiff's complaint is dismissed.

2 4. Plaintiff is granted thirty days from the date of service of this order to file an amended  
3 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil  
4 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket  
5 number assigned this case and must be labeled "Amended Complaint." Failure to file an  
6 amended complaint in accordance with this order will result in a recommendation that this action  
7 be dismissed.

8 Dated: March 16, 2025



CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

13 1  
14 eber0736.14